

OUTGOING AIRGRAM

DEPARTMENT OF STATE DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

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TOKYO

A-494 Jan 7, 1952

Subject: UN Treaty with Japan. Idson's Despatch 915.

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This is the SIAM and concluding airgram in reply to ref. despatch.

Article XII.

2. The wording of paragraph 3 (a) is another example of what the Department considers to be an improvement in the standard version of the treaty. It is found, in the form proposed, in the treaty of amity and economic relations with Honduras signed September 7, 1951 (Article XII, paragraph 3, thereof), and it is missing in a other lately signed treaties only because it was developed for general use after the negotiations thereof were complete on this particular. It is now standard, of course, and is to be used in all negotiations henceforth. It is contained, in effect, in the treaties of friendship, commerce and navigation earlier concluded by the United States with, respectively, China (1946 - Article XVI, paragraph 4) and Italy (1948 - Article XIV, paragraph 4). It has also long been standard in bilateral trade agreements entered into by the United States; it is, of course, in the GATT; and it is considered to be a normal, internationally-accepted rule. Its omission, in the form proposed to Japan, from treaties signed during 1949-51, when there existed more confidence that the GATT and the ILO Charter might become universally applicable, is no reason for failing to make improved provisions in a US-Japanese treaty negotiated under present circumstances.

The wording of paragraph 3 (a) is merely an elaboration of elements already present in the treaties signed during 1949-51: namely, the rule concerning quotas contained in paragraph 3 (b) and the rule on publication contained in paragraph 2 of Article IV. Paragraph 3 (a) clarifies intent that the public notice requirement

is applicable

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is applicable to the particular matter of the amount of goods which might be imported or exported during prescribed periods when quantitative restrictions are to be in force; and it clarifies that in situations where quantitative restrictions are implemented otherwise than on a country-by-country quota basis, the trader can have some assurance that the administering authorities will go about the business of issuing licenses in an above-board manner. The Government does not conceive how the proposed rule could embarrass the Japanese or interfere with the necessary regulation of Japanese imports and exports.

3. Paragraph 4 establishes the rule that restrictions based on humane, moral, sanitary or other non-commercial considerations deemed necessary of a customary sort shall not be imposed or administered in a manner to "arbitrarily discriminate" against the commerce of the other party; that is, such restrictions should be governed by the general spirit, if not the precise letter, of most-favored-nation treatment. Lacking fuller information, the Government withholds opinion as to whether this paragraph adequately covers what the Japanese have in mind regarding "certain natural resources subject to conservation controls"; and no reaction should be taken on this question until after further analysis.

4. Paragraph 5 is in reality an establishment provision, spelling out discrimination rule already contained in Article VII concerning the right of individuals and companies to engage in commercial activities on a national and most-favored-nation basis; it is included here for purpose of emphasis and to achieve a symmetrical coverage of the rules regarding international trade. The Japanese system of import allocations would be affected by this paragraph only if they discriminated against persons of American nationality, as such. So long as differentiations and discriminations are in terms of currency or the national origin of the goods, paragraph 5 would not be concerned.

Article VIII. Pending receipt from the Mission of a full account of the explanations given, the Government will defer comment on this article and any questions the Japanese may have concerning it.

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This completes Department's reply to ref. despatch. Mission's preceding despatch, no. 871 of WFO 7, was dealt with in Department's reply of WFO 27; and the reply to Mission's despatch no. 524 of WFO 19 is now in course of preparation.

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